

## **Influenza Questions and Answers: Workplace Issues during an outbreak of Influenza or other communicable disease. (November 30, 2009)**

This document is intended to assist state agencies in preparing for workplace issues that may arise during an outbreak of influenza or other communicable disease. An outbreak is an occurrence of disease greater than otherwise expected in a particular place and time. It may be small and localized, or affect thousands of people across a continent.

Novel swine-origin influenza A (H1N1) is a new flu virus first detected in the United States in April of this year. Because this is a new virus, most people have little or no immunity against it, and illness may be more widespread as a result. This H1N1 is now causing a worldwide pandemic and it is expected to return in the fall. In the United States, most people who have become ill with H1N1 have had typical flu symptoms and have recovered without requiring medical treatment. To prevent transmission of H1N1, the U.S. Centers for Disease Control and Prevention (CDC) and the Massachusetts Department of Public Health (DPH) have issued guidance on how to prevent the spread of influenza.

The symptoms of influenza include: fever, cough, sore throat, runny or stuffy nose, body aches, headaches, chills and fatigue. The CDC and DPH recommend that sick individuals stay home for 24 hours after fever resolves without the use of fever lowering medications, such as acetaminophen or ibuprofen containing products.

Children have accounted for 60-70% of cases of the H1N1 flu cases. CDC has identified certain populations that are at higher risk for complications with any sort of influenza:

- Children less than 5 years old
- Persons aged 65 years or older
- Children and adolescents (less than 18 years) who are receiving long-term aspirin therapy and who might be at risk for experiencing Reye syndrome after influenza virus infection
- Pregnant women
- Adults and children who have chronic pulmonary, cardiovascular, hepatic, hematological, neurologic, neuromuscular, or metabolic disorders; or immunosuppression (including immunosuppression caused by medications or by HIV);
- Residents of nursing homes and other chronic-care facilities.

In the case of H1N1 pandemic influenza, children are most at risk of getting infection, but pregnant women and individuals with asthma and obesity seem to be at most risk of complications. The elderly are less like to get infected (thought to be due to residual immunity from prior exposure to similar viruses), but when infected, are at higher risk of complications.

**The following Q&A is intended to give general guidance in the area of influenza response and control in the workplace.**

### **I. Absenteeism and Use of Sick Time**

- 1. Q: May an employer screen employees who appear to be sick at work to determine if their illnesses match the symptoms described above? May employers ask employees for information relative to their current symptoms/medical condition?**

A: An influenza pandemic is a serious public health issue that requires monitoring and screening beyond what is typically allowed in the workplace in order to keep employees safe and healthy and in order to prevent further spread of the disease. During an influenza

outbreak, it is important that the employer follow the CDC and/or DPH guidelines for screening employees. DPH has published the following flu checklist that employers can use to ascertain the likelihood that an employee is suffering from an influenza-like illness:

- Yes • No Do you have a cough?
- Yes • No Do you have a sore throat?
- Yes • No Do you have a headache, body aches or chills?
- Yes • No Do you have a fever of 100.4 degrees F or more?

If the employee reports a fever of 100.4 degrees F or more **and** a cough or sore throat, the employee has an influenza-like illness and should stay home for at least 24 hours after fever resolves without the use of fever lowering medications (such as acetaminophen or ibuprofen containing products). If the employee indicates "yes" to only one of the questions above, or if the employee reports other symptoms, the employee should stay at home at least one day to observe for other symptoms. If additional symptoms present, use the check list questions again to ascertain if the employee has developed an influenza-like illness.

**2. Q: May an employer send an employee home if s/he exhibits symptoms described above? Does the employee have to use sick time in order to be paid?**

A: Yes, an employer may send a symptomatic employee home if the employer has reason to believe that an employee poses a risk of spreading the illness to other employees. This would be an appropriate use of sick time; an employee in this situation, therefore, must use sick time in order to get paid. Employees sent home are not required to undergo a medical evaluation, but may, at their own option, be seen by a medical provider.

**3. Q: What should an employee do if he/she is concerned that a co-worker or supervisor has the symptoms described above while at work?**

A: The employee should notify his/her supervisor or human resources.

**4. Q: May an employer insist that a symptomatic employee stay home in accordance with CDC and/or DPH guidelines?**

A: Yes. Currently, DPH has advised health care providers to honor the exclusion period and not "clear" individuals to return to work prior to the end of that period.

**5. Q: If the employer requires that an employee leave work or remain out of work, does the employee have to use sick time? What if the employee is out of sick time? May s/he use personal or vacation time?**

A: Yes, this is an appropriate use of sick time; employees, therefore, will be charged sick time in order to be paid. In accordance with current collective bargaining agreements and red book provisions, at the request of the employee, use of other leave time may be substituted for sick leave should the employee have no sick leave available.

In addition, employers have been urged by the CDC and DPH to revisit sick leave policies during an influenza outbreak to ensure there are no built in disincentives for employees to stay home should they become ill. During an influenza outbreak, if an employee is out of sick time and has exhausted personal and vacation leave and comp time, and is symptomatic of an influenza-like illness, the employee shall be advanced up to five sick leave days to cover up to seven calendar days from the date the employee became ill. Employees who are advanced sick leave will have sick leave reduced as it is accrued each month until the advancement is paid back in full. Should an employee leave the service of the

Commonwealth prior to paying back the full advancement of sick leave, the employer may charge the balance owed against the employee's vacation or compensatory time cash-out.

- 6. Q: If a healthy employee within one of the complication risk categories listed on page 1 of these guidelines does not want to work due to the risk of becoming ill, is the employer required to grant the employee leave? May the employee use sick time or other paid leave benefits?**

A: The employer is not required to grant leave in this situation; however, employers should explore alternative arrangements for the employee. For example, if reassignment or telecommuting is a feasible alternative for an employee, the employer should consider granting such an arrangement. This is especially true for those employees who are at significant risk, such as those with compromised immune systems or those undergoing chemotherapy. The employer may also grant the use of vacation or personal time if it will not compromise operational needs. The use of sick time may not be used to avoid contracting an illness.

- 7. Q: May an employee use sick time to care for a family member who is ill? What if the employee does not have sufficient sick time to get paid? What if the employee has exhausted his or her sick in family entitlement?**

A: Yes, the employee may use sick time under the sick in family leave policies as defined in the collective bargaining agreements and the red book. Employees may also request the use of other leave time which, in accordance with the collective bargaining agreements and red book provisions, may be subject to approval by the employer. If employees have used up all their sick in family entitlements under these policies, they may use their sick time.

- 8. Q: May an employer require a symptom free employee to leave work or remain out of work if s/he has been exposed to someone who is ill with influenza?**

A: No, employers may not require an employee to leave work or remain out of work based solely on exposure to someone who is ill with influenza. Employers are encouraged to guide employees who may be caring for ill family members or friends to follow the guidelines issued by the CDC to lessen the spread of influenza in the home, which can be found at: [http://www.cdc.gov/h1n1flu/guidance\\_homecare.htm](http://www.cdc.gov/h1n1flu/guidance_homecare.htm). In particular, individuals with exposure to cases of influenza should be counseled to do what is called "personal surveillance" to watch for potential signs and symptoms consistent with influenza, and to report illness and exclude themselves from exposing others if they develop symptoms.

- 9. Q: Must an employer grant leave to an employee whose children have been dismissed from school or daycare due to an influenza outbreak? If so, may the employee use sick in family to be paid?**

A: Providing it does not significantly compromise business operations, employers should grant vacation or personal leave to employees whose children have been dismissed from school or daycare in order to keep children exposed to influenza home and away from the general public. To the extent practicable, employers are encouraged to explore alternatives for employees, such as telecommuting, in this situation. Although the employer has no obligation to grant sick leave for a school closure, the employer should be as flexible as possible in granting vacation or personal leave time, if all other leave time has been exhausted, to support public health efforts to prevent the spread of the illness. Up to five days of emergency dependent care leave (vacation time) may be advanced to employees in this situation. Sick leave will not be advanced to employees to stay home with children who have been dismissed from school or daycare.

**10. Q: Is influenza covered under the FMLA?**

A: Influenza may be covered by the FMLA if it meets the criteria for a "serious health condition" as defined by the FMLA regulations. This will need to be evaluated on a case by case basis given the severity of illness an employee experiences.

**II. Medical Documentation**

**11. Q: May an employer insist that an employee be tested for influenza?**

A: No. The CDC and the DPH recommend that testing and treatment be focused on those with severe respiratory illness and those at highest risk of complications of influenza. Therefore, an employee's health care provider will determine whether or not the employee should be tested.

**12. Q: During an influenza outbreak, may an employer require an employee to provide medical documentation to excuse an absence due to influenza?**

A: The CDC and DPH have issued guidance that not all patients with suspected influenza need to be or should be seen by a health care provider. Furthermore, employers should recognize that an employee may have a difficult time obtaining medical documentation given the strain on resources within the medical community during an influenza outbreak. Therefore, as a general rule, employers should not require medical documentation to excuse an absence due to influenza. However, should an employer have reason to suspect abuse of sick leave in this circumstance, the employer may require satisfactory medical evidence from the employee in accordance with the collective bargaining agreements and red book provisions.

**13. Q: During an influenza outbreak, may an employer require an employee to produce clearance from his or her health care provider to return to work?**

A: No. DPH released guidance which indicates that a health care provider's note is not required for patients to return to work after an exclusion period. Furthermore, DPH has asked health care providers to honor the exclusion period by not issuing notes clearing patients to return to work prior to the end of the exclusion period.

**III. Social Distancing Policies**

**14. Q: When communicating with employees before, during and after an influenza outbreak, are there restrictions on the types of information that can be shared?**

A: The employer may communicate to colleagues and customers that an employee will be out of the office, but employee-specific medical information (i.e. information about the nature of an employee's illness) is confidential.

**15. Q: May an employee take it upon themselves, without supervisory approval, to wear protective clothing, such as face masks, gloves, etc.?**

A: Employees may not wear protective clothing that interferes with work without supervisory approval. If an employee makes such a request, the supervisor should discuss the request with the Human Resources Manager, and together, they should seek guidance from information published by the CDC, OSHA and/or DPH relative to their recommendations for specific workplace settings, such as health care facilities, correctional institutions, etc.

#### **IV. Reassignments**

- 16. Q: May an employer reassign staff to other duties or other work locations on an emergency basis due to high absenteeism during an influenza outbreak?**

A: Yes.

**V. General References:**

**DPH H1N1 Flu Page:**

<http://www.mass.gov/flu>

**DPH Flu Blog:**

<http://publichealth.blog.state.ma.us/h1n1-swine-flu/>

**U.S. Government 1 Stop Access to Flu Information:**

<http://www.flu.gov/>

**CDC H1N1 Flu Page:**

<http://www.cdc.gov/h1n1flu/>

**OSHA Influenza Page:**

<http://www.pandemicflu.gov/>

Commonwealth of Massachusetts  
Executive Office of Health and Human Services

*List of H1N1 Assigned Staff to Provide an EOHHS Coordinated Approach*

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Tina Wroblewski	CHE
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Mary Gambon	DCF
Mary Lutz	DCF
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